

**COMBINED DECLARATION AND POWER OF ATTORNEY
FOR CONTINUATION-IN-PART APPLICATION**

AS A BELOW-NAMED INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: NOVEL APOPTOSIS MODULATING PROTEINS, DNA ENCODING THE PROTEINS AND METHODS OF USE THEREOF, the specification of which

(check one) x is attached hereto
 was filed on 1994

as application serial no. and was amended on (if applicable).

**I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-
IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY
AMENDMENT REFERRED TO ABOVE.**

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

"(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or

attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability."

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below, and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) and (b) set forth above which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application Serial No.: 08/160,067
Filing Date: November 30, 1993
Status (patented, pending, abandoned): pending

As to the subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said earlier application, or in public use or on sale in the United States of America more than one year prior to said earlier application. Said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of said earlier application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said earlier

application; and the earliest application(s) for patent or inventor's certificate on said invention filed by me or my legal representatives or assigns in any country foreign to the United States of America is identified below, as well as all other such applications (if any) filed more than twelve months prior to the filing date of this application:

- The priority of the earliest application(s) (if any) filed within a year prior to said pending prior application is hereby claimed under 35 U.S.C. § 119.

As to the subject matter of this application which is not common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States of America more than one year prior to the date of this application. Said subject matter has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application; and the earliest application(s) for patent or inventor's certificate on said subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America is identified below, as well as all other such applications (if any) filed more than twelve months prior to the filing date of this application:

The priority of the earliest application(s) (if any) filed within a year to this application is hereby claimed under 35 U.S.C. § 119.

I hereby appoint the following attorneys and agents to prosecute that application and to transact all business in the Patent and Trademark Office connected therewith and to file, to prosecute and to transact all business in connection with all patent applications directed to the invention:

Reid G. Adler - Reg. No. 30,988
Felissa H. Cagan - Reg. No. 35,089
Thomas E. Ciotti - Reg. No. 21,013
Patricia M. Drost - Reg. No. 29,790
Edward G. Durney - Reg. No. 37,611
Tyler Dylan - Reg. No. 37,612
Nancy Joyce Gracey - Reg. No. 28,216
Gary A. Green - Reg. No. P-38,474
Bill Kennedy - Reg. No. 33,407
Paul C. Kimball - Reg. No. 34,641
Susan K. Lehnhardt - Reg. No. 33,943

Shmuel Livnat - Reg. No. 33,949
Gladys H. Monroy - Reg. No. 32,430
Kate H. Murashige - Reg. No. 29,959
Jackie N. Nakamura - Reg. No. 35,966
Freddie K. Park - Reg. No. 35,636
Paul F. Schenck - Reg. No. 27,253
James R. Shay - Reg. No. 32,062
Debra A. Shetka - Reg. No. 33,309
Cecily Anne Snyder - Reg. No. 37,448
E. Thomas Wheelock - Reg. No. 28,825

and:

Address all correspondence to:

Susan K. Lehnhardt
MORRISON & FOERSTER
755 Page Mill Road
Palo Alto, CA 94304-1018

Address all telephone calls to: Susan K. Lehnhardt at 415-813-5600.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Full Name Inventor: Michael C. Kiefer

Signature: _____ Date _____

Residence: Clayton, California *CA*

Citizenship: U.S.A.

Post Office Address: 401 Wright Court, Clayton, California 94517

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Full Name Inventor: Philip J. Barr

Signature: _____ Date _____

Residence: Berkeley, California *CA*

Citizenship: United Kingdom

Post Office Address: 152 Hillcrest Road, Berkeley, California 94705